

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD-41901
(5-66)
(Formerly CFA-1901)

**ASSURANCE OF COMPLIANCE
WITH DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGULATIONS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

(hereinafter called the

(Name)

"Applicant") HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352 and all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that Title, to the end that, in accordance with Title VI of the Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department of Housing and Urban Development, and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department of Housing and Urban Development, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision or similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department of Housing and Urban Development.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal loans, advances, grants, properties, contracts or other Federal financial assistance extended after the date hereof to the Applicant by the Department of Housing and Urban Development, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated _____

(Applicant)

BY _____

(Authorized Official)

(Applicant's Mailing Address and ZIP Code)

APPENDIX L.2

THE INVESTIGATOR'S WORKSHEET

Case Name

Case Number

(For Complaint Investigation)

A.

The Complainant(s)

Name:

Telephone Number(s):

Address:

(Home)

(Work)

(Other)

Hours complainant says
convenient to callDate complaint received by
Regional office FHEO:

____ a.m. ____ p.m.

Complainant alleges discrimination
based on:

____ race; ____ color; ____ National origin; ____ *sex *

* applicable for section 109, HCDA 1974, only

(For Compliance Review)

B.

Date when compliance review was scheduled _____

Reason why compliance review is scheduled _____

Office requesting a Compliance Review ☐ CC ☐ RO ☐ AO

Date of last compliance review or complaint investigation _____

2.

C.

The Respondent Agency(s)

Name:

Telephone Number(s):

Address:

Regular working hours:

Chief Executive Officer:

date notified of the
existence of a complaint
or scheduling an on site
visit _____

Affected HUD Programs: Contract No. Dollar amount

1.

2.

3.

4.

etc.

Program Data which should be reviewed or examined before the field
visit. (See suggested items attached)

1.

2.

3.

4.

etc.

Other relevant data about the Respondent.

APPENDIX L.2

3.

1. Size of the program(s) e.g. number of units or size of the area of the community served: _____
 2. Purpose of the program:
 3. Map(s) of the area in which recipient agency is located is available ____ Yes ____ No
-

D.

Information about the Community:

1. Size of the Community (City or SMSA) served by HUD program(s) _____; and
Square miles
Size of the project area served by HUD program(s) _____.
Square miles
 2. Population of the community served by HUD programs by race, color, or national origin; and population of the project area served by HUD programs by race, color, or national origin.
 3. Race, color, or national origin of all persons eligible to be served by program under investigation or to be reviewed.
 4. Race, color, or national origin of all persons served by the program according to information in either Central, Regional or Area Offices of HUD.
 5. Develop a form upon which the race, color, national origin of participants as stated in number four above could be compared with the same information as provided by the recipient.
 6. Information provided by (or available from) other Federal departments and agencies which may be of use in the HUD field visit.
-

5

HUD-Wash., D. C.

APPENDIX 4.2

4

Information

Source of Information

Contact person

HUD investigator

6/76

6

HUD-Wash., D. C.

TITLE VI COMPLIANCE CHECKLIST
(RESERVED)

APPENDIX 4.4

STANDARD HUD APPROVED TENANT SELECTION AND ASSIGNMENT PLANS

The local Authority shall elect either to establish a plan under which the eligible applicant must accept the vacancy offered or be moved to last place on the eligible applicant list, or to establish a plan providing for a system of rejection as follows:

- (a) If there is a suitable vacant unit in more than one location, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he/she shall be offered suitable unit at the location containing the next highest number of vacancies. If the applicant rejects three such offers, he/she shall be placed at the bottom of the eligible applicant list. The local Authority shall make all such offers in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.

"Location" means any low-rent housing site as established in a Development Program, except that when sites are adjacent or within a block or each other, such sites collectively shall be considered one location. In scattered site developments, the local Authority shall make reasonable determinations of "locations" based on the specific scatterization, including any groupings that may be reasonably consistent with the purpose of these requirements. Such determinations shall be submitted for approval to the Assistant Regional Administrator for Housing Assistance.

- (b) If there are only two locations at which suitable vacancies exist, the applicant shall be offered a unit at the location first where the most vacancies exist. If the applicant rejects the first vacancy offered, he/she shall be offered the second, and if he/she rejects the second, his/her name shall be moved to the bottom of the eligible applicant list. The local Authority shall offer all such locations in sequence and there must be a rejection of a prior offer before the applicant may be offered another location.
- (c) If there is only one location at which suitable vacancies exist, the applicant shall be offered a unit at the location and if he/she rejects such offer, he/she shall be given a second offer of a

suitable vacancy as soon as one becomes available.
If the applicant rejects the second offer he/she
shall be moved to the bottom of the eligible
applicant list.

Model Interim Variance to Standard HUD Approved Tenant Selection and
Assignment Plan

PLAN FOR
VOLUNTARY COMPLIANCE
WITH
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Smackover Housing Authority
555 North Street
Smackover, Ozium
(herein referred to as "the Authority")

GENERAL PROVISIONS

1. The Authority agrees that the Assistant Secretary for Fair Housing and Equal Opportunity (AS/FHEO) on his/her own motion may review compliance with this Plan. As a part of such review, the AS/FHEO may require written reports concerning compliance. This Plan applies to all low-rent housing units managed by, or hereafter acquired by the Authority.
2. It is understood that this Plan does not constitute an admission by the Authority of any violations of Title VI of the Civil Rights Act of 1964 and HUD regulation issued thereunder.
3. The Authority agrees to undertake an affirmative program of nondiscrimination and to assure an Equal Housing Opportunity without regard to race, color, or national origin.
4. The Authority agrees that it shall refrain from committing any act of discrimination against any person in the terms, conditions or privileges of rental of a dwelling unit or in the provision of services or facilities in connection therewith, on the basis of race, color, or national origin.
5. The Authority agrees to refrain from interfering with any person in the exercise or the enjoyment of the right to rent or occupy a dwelling in any manner that might result in discrimination on the basis of race, color, or national origin.
6. The Authority agrees to process the applications of the persons for occupancy of any dwelling unit owned or managed by the Authority in accordance with its own adopted Tenant Selection and Assignment Plan, as modified by the terms of this Plan.
7. The Authority acknowledges receipt of Fair Housing Posters, and Equal Employment Opportunity Posters (HUD 901) which it agrees to post and display in its administrative and rental offices. Failure to display posters shall be deemed prima facie evidence of the intent to discriminate in housing practices. The Authority will certify said posting to the HUD _____ Regional Office within ten (10) days following notice of approval of the Plan.
8. The Authority agrees to refrain from any act of discrimination on the grounds of race, color, or national origin, in the recruitment, hiring, promotion or assignment of its employees, and to refrain from making employee assignments in such a manner as to reinforce the racial identifiability of any housing project.

AFFIRMATIVE ACTION I

It is further agreed that, within 30 days of notification of the approval of the Plan, the Authority shall take the following affirmative steps with regard to dwellings which it owns or manages, in order to disestablish any existing pattern of segregated housing and employment and in order to assure equal housing opportunity and equal employment opportunity in the future.

A. Steps to assure assignment of tenants on a racially non-discriminatory basis:

- (1) All applications received for public housing shall be categorized according to the size unit which is appropriate for the applicant family. A waiting list shall be maintained for new applications within each unit size category offered by the Authority.
- (2) All applications for public housing shall be dated and time stamped when they are submitted. This time and date stamp shall be used for determining the priority of applications of persons equally eligible.
- (3) Applications which are currently on file, or which constitute a waiting list, shall be revised and organized in accordance with the above criteria.
- (4) All applicants for public housing shall be assigned to units on a "first-come-first served" basis in accordance with the date and time of their application, within the rent ranges established by the Authority and sanctioned by HUD; provided however, that the Authority, in determining qualifications, or lack thereof, of persons applying for rental of housing shall not be prohibited from applying factors affecting qualifications, preferences of priority which do not involve consideration of race, color, or national origin and which have been approved by HUD, or such factors which are required or are in conformity with directives, circulars or regulations from time to time issued by HUD.

D. Steps to Further Integrate Public Housing

1. New Applicants

- (a) Each applicant shall be offered the first available appropriately sized unit in a section in which his race does not predominate.* If more than one appropriate unit is available in a location in which the applicant's race does not predominate, the applicant shall be offered a choice of all such suitable units. If an appropriate unit is not immediately available in such location, the applicant may then be offered a choice of appropriately sized units located in sections in which the applicant's race does predominate. An applicant may refuse to accept a unit offered in a section in which the applicant's race predominates, and may wait until an appropriate unit becomes available in a location in which the applicant's race does not predominate.
- (b) If the applicant chooses to wait, the applicant shall not lose his/her place or priority by doing so.
- (c) If the applicant refuses all units offered in locations in which his/her race does not predominate, other than for good cause, the applicant shall lose his/her place and be placed at the end of the waiting list.
- (d) Each new applicant, at the time offered an application to be completed, shall be advised of options under this provision, and before accepting a unit, shall be informed of the unit number of each dwelling which qualifies under this provision as available for his/her choice.

* The word "section" as used herein shall refer to a project site or portion of a project site which is or has become identified with occupancy by members of a single race. The word "predominate" as used herein shall refer to a situation in which approximately 75% or more of the persons residing in a given project are of the same race.

APPENDIX 4.5

2. Transfer Applicants

- (a) Any present tenant of the Authority who resides in a unit located in a section in which his/her race predominates may apply for a transfer to an appropriately sized unit located in a section in which his/her race does not predominate. A transfer waiting list shall be maintained for each category of unit offered by the Authority.
 - (b) Each such person who desires to transfer shall submit an application for transfer to the Office of the Executive Director of the Authority within thirty days of being notified of his/her right to do so. The application of each person shall be date and time stamped when submitted, and shall be placed on a "transfer waiting list" within the category of each size unit for which the family is eligible.
 - (c) Whenever a unit becomes available for which there are no candidates requiring or requesting transfer to such unit under the Authority's existing policy allowing transfers when necessary to place a tenant family in a dwelling unit of a size appropriate to the family size and composition or for health purposes, such unit shall be offered to the person with the highest priority on the "transfer waiting list" for that category, whose race does not predominate in the section in which the offered unit is located.
 - (d) Persons who apply for transfer under this plan shall not be required to re-establish their eligibility for public housing and shall not be required to provide information on their transfer application other than their name, address, race, number of persons in family, and the sex and age of family members.
- C. Steps to notify present tenants, prospective tenants and the community at large of the policy of nondiscrimination.
- 1. In all offices in which applications are taken or in which Authority business is conducted, the Authority shall post and display a sign indicating that all projects are open to all eligible persons without regard to race, color, or national origin. Such sign shall be prominently and conspicuously placed.
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2. In all offices in which applications are taken or in which Authority business is conducted, the Authority shall post in a prominent place clearly visible to all applicants and potential applicants, a list of all Authority housing projects, their locations, formal designations, and popular names. Accompanying this list, there shall be a statement indicating that tenants are assigned to appropriately sized units in accordance with priorities and preferences which are not based on discrimination due to race, color, or national origin.
3. The Authority shall distribute to each present tenant a letter explaining that the Authority will be operated as a nonsegregated system without discrimination based on race, color, or national origin, and explaining that in order to correct the effect of past practices alleged to be discriminatory, present tenants will be given the opportunity to apply for a transfer to a unit located in a section which was previously occupied predominantly by tenants of a different single racial group. Each such letter shall explain the portions of this plan relating to the procedures for accomplishing the transfer. Letters distributed pursuant to this provision shall also indicate that the ability to transfer is limited by the availability of appropriate units and that the application to transfer must be submitted to the Office of the Executive Director within thirty days after receipt by the tenant of the letter. Each letter shall also include, as an attachment, an application form to be used in applying for a transfer.

The Authority agrees to mail to each person presently on a waiting list a letter explaining that the Authority will be operating as a non-segregated system without discrimination based on race, color, or national origin. Each such letter shall explain the provisions of Paragraph I(B)(I) in language designed to be clearly and easily understood.

The Authority will certify to the Assistant Regional Administrator for Fair Housing and Equal Opportunity that these acts called for in paragraph 3 and 4 will be carried out within thirty (30) days following receipt of notice of approval of this Plan.

The Authority agrees to give to each new applicant who submits an application, a written notice explaining that the Authority is operated on a non-segregated system without discrimination based on race, color, or national origin. Such notice shall

explain the relevant aspects of this Plan relating to tenant assignment policies, including the right to refuse a unit as provided in paragraph I(B)(I). At the time an offer is made, the applicant shall furnish a signed statement listing the units shown him and indicating what choice was made or, if no choice was made, his reason for refusing each apartment offered.

Each person who signs a statement or acknowledgment pursuant to this Plan shall be given a copy of the statement or acknowledgment which he or she signed.

AFFIRMATIVE ACTION II

It is further agreed that the Authority shall undertake the following measures in order to implement this Plan.

A. Instruction of Employees

1. Within thirty days after receipt of notice of approval of this Plan, the Authority shall inform each employee in person, or by general meeting of the provisions of this Plan, including any reporting and record keeping provisions hereinafter described. Each employee shall be advised that failure to comply with the provisions of this Plan shall subject him/her to dismissal or other disciplinary action.
2. Within thirty days after receipt of the notice of approval of this Plan, the Authority shall secure from each employee a signed statement that he or she has received the instructions described in the preceding paragraph. Each such statement shall be forwarded to the Assistant Regional Administrator for Fair Housing and Equal Opportunity as provided for under other provisions of this Plan.
3. Within ten days after the employment of any new employee the Authority shall provide such employee with the instructions herein described and shall secure from each person a signed statement as above described. The signed statements of each new employee shall be forwarded to the Assistant Regional Administrator for Fair Housing and Equal Opportunity with the next regular periodic report.

B. Nonracial Assignments of Authority Personnel

* Because the employment practices of the Authority tends, on the ground of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of and/or to subject them to discrimination as a result of the administration and/or management of the _____ Authority; the provisions below are included in an effort to assure equality of opportunity to, and nondiscriminatory treatment of, HUD beneficiaries pursuant to 24 CFR 1.4(6)(c)(2) of the Department's Regulation.

*This section to be used only when employment discrimination has been found as required in 24 CFR 1.4(6)(c)(2).

APPENDIX 4.5

1. Within thirty days after receipt of notice of approval of this Plan, the Authority shall submit to the Regional Administrator a plan for reassignment of employees to eliminate the racial identification of work assignments. This plan will set out a timetable designed to transfer employees in an adequate number and selection of professional, clerical, and maintenance jobs to comparable positions at other projects, in order to achieve integrated staffing patterns.
2. The Authority agrees fully with HUD Notice IM 73-28 (LHA), Subject: Upward Mobility for Low-Rent Public Housing Residents, and agrees to implement its own adopted plan in a manner that will demonstrate its compliance plan the spirit and intent of the notice.

C. Monitoring Compliance with the Plan.

1. (a) Thirty days after receipt of notice of approval of this Plan by the Assistant Secretary for Fair Housing and Equal Opportunity, the Authority shall submit to the Assistant Regional Administrator for Fair Housing and Equal Opportunity, a report setting forth all steps taken thus far in conformity with the provisions of this Plan. Such report shall include copies of all signs and notices posted pursuant to this Plan and copies of all letters and notices sent, given or to be sent or given pursuant to the Plan, together with the name and address of each recipient and the date mailed or given. Such report shall also include copies of all signed statements received from employees pursuant to paragraph II(A)(2).
2. Three months following receipt of notice of approval of this Plan, and at three month intervals for a period of one year, and every six months thereafter for two years, the Authority shall submit to the Assistant Regional Administrator for Fair Housing and Equal Opportunity the following information:
 - (a) the address of each unit which has been vacated during the previous three (or six, as applicable) month period, together with an indication of the date it was vacated, the date it became available for re-rental, the date it was re-rented and the number of bedrooms which the unit

contains. The initial report under this paragraph shall provide the above information for all units which were vacant at the time this Plan was adopted, as well as those vacated within three months after receipt of notice of approval of the Plan.

- (b) The name, address and race of each person who applied for a unit during the previous three (or six, as applicable) month period, together with the following
- (1) Date application submitted;
 - (2) Number of persons in family;
 - (3) Size unit for which family is qualified;
 - (4) Preference or priority to which application is entitled, for reasons not related to this Plan;
 - (5) If accepted for tenancy, address and size of unit assigned; date moved in;
 - (6) If not accepted for tenancy, date applicant was so informed; reason not accepting;
 - (7) If accepted, but withdrew application, date of withdrawal;
 - (8) If accepted and placed on waiting list, date placed on waiting list and indication of which list placed on.

The initial report pursuant to this paragraph shall include the name, address, race, number of persons in family and unit size for each person on a waiting list at the time of receipt of notice of approval of this Plan, together with the date such person applied.

- (c) The name of each person previously reported as being placed on waiting list who moved into a unit, together with the address and size of the unit and the date moved in.
- (d) The name of each applicant who, during the preceding three (or six, as applicable) month period exercised his/her right of refusal under paragraph I(B)(1), together with the address of the unit or units refused.
- (e) The name, unit number, race and date of application of each tenant who applied for transfer pursuant to paragraph I(B)(2) together with the size units the family qualified for.

APPENDIX 4.5

If the transfer was granted, the unit number to which he/she moved and date he/she moved. If the transfer was not granted, the present priority position of the transfer application.

- (f) Reports filed pursuant to this Plan shall also contain a description of all affirmative steps taken during the preceding reporting period in compliance with this Plan, including copies of all signed statements obtained from applicants or employees, and all notices or letters sent, if any.
- (g) For a period of three years following receipt of notice of approval of this Plan, the Authority shall maintain and retain all records which are the source of, or contain any of the information pertinent to its obligation to comply with this Plan.

REPORTS

1. The Authority agrees that a report shall be filed with the HUD Regional Office in reference to matters contained in this plan. The Authority shall also notify the AS/FHEO through the ARA/FHEO of any other action taken in compliance with the provisions of this Plan. The reports will be forwarded to:

Assistant Regional Administrator
for Fair Housing and Equal Opportunity
U. S. Department of Housing and
Urban Development
Room 11 Perpoint Plaza
504 Mercy Boulevard
Rotunda, Illinois 30000

2. This Plan gives the AS/FHEO continuing jurisdiction over the matters related hereto. It should be understood that this is a contractual obligation running to the AS/FHEO and that the AS/FHEO may sue on the plan in the event of substantial violation on the part of the Authority.

APPENDIX 4.5

SMACKOVER HOUSING AUTHORITY

By _____
Smackover Housing Authority
555 North Street
Smackover, Ozium

(Date)

I recommend approval of this Agreement

Assistant Regional Administrator
for Fair Housing and Equal Opportunity

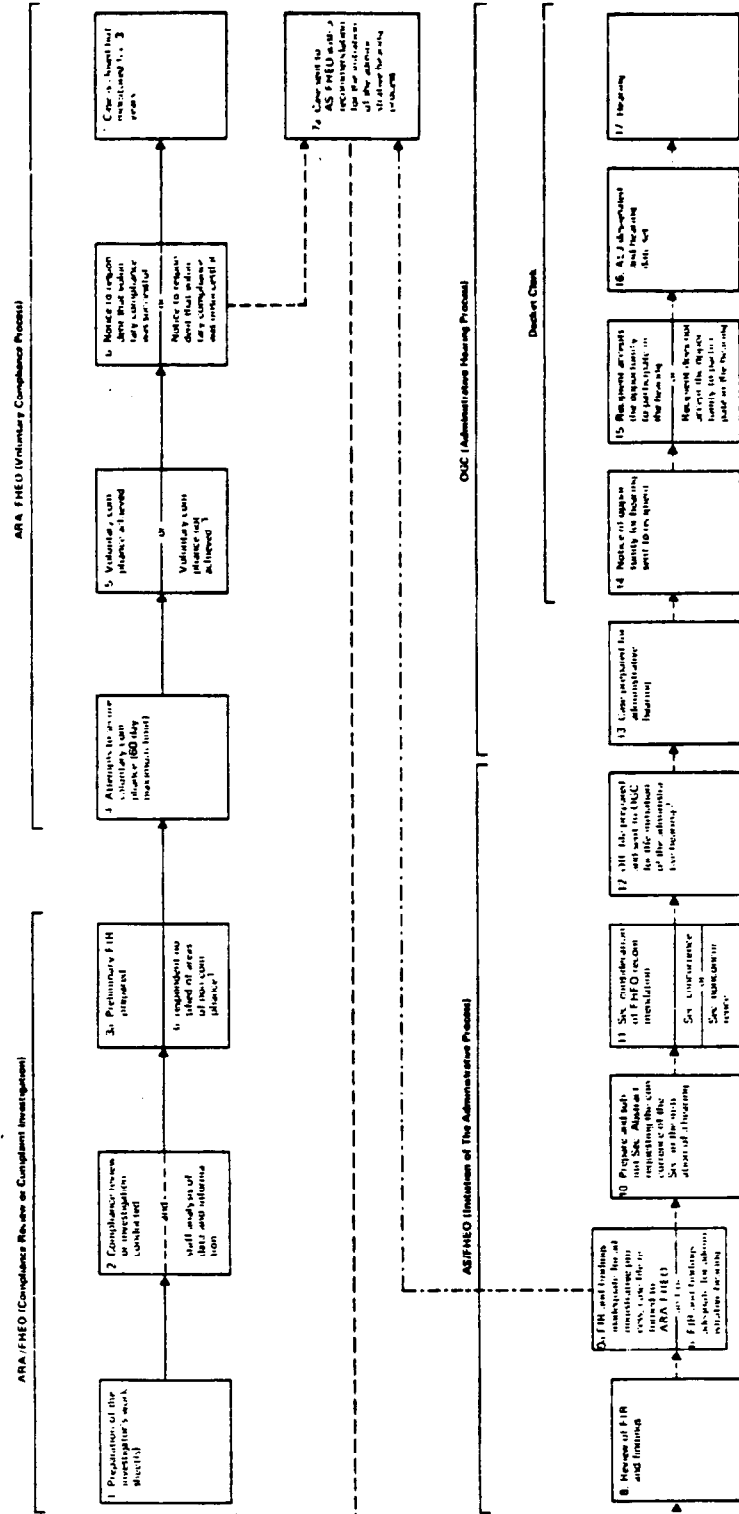
(Date)

I approve this Agreement modifying the
Tenant Selection and Assignment Plan
of the Smackover Housing Authority

Assistant Secretary for Fair Housing
and Equal Opportunity

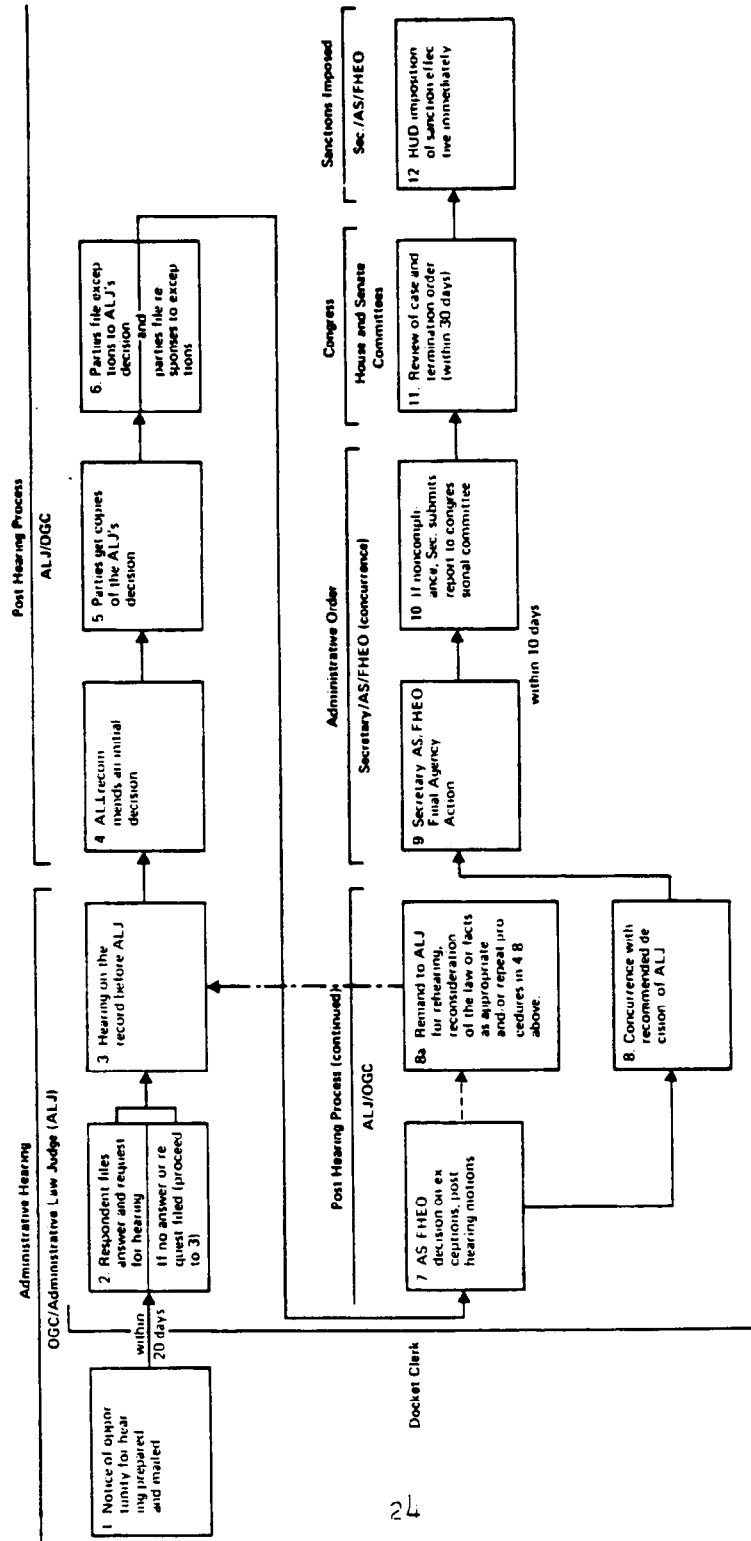
(Date)

APPENDIX 4.6(a)

Flow Chart of HUD's Title VI Compliance Review and Complaint Investigation Process
Title VI of the Civil Rights Act of 1964 (42 CFR 1)

APPENDIX 4.5(b)

Flow Chart of HUD's Title VI Hearing Procedures Pursuant to HUD Implementing Regulation Title VI of the Civil Rights Act of 1964 (24 CFR)



¹ Title VI matter coordinated with other Federal Departments may be consolidated into one hearing

STANDARD HUD EQUAL EMPLOYMENT CONTRACT CLAUSE

The equal employment opportunity clause of HUD's Loan and Capital Grant Contract, (Part II, Terms and Conditions,) Section 107(f) states:

In the carrying out of the Project, the Local Public Agency will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Local Public Agency will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Local Public Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Local Public Agency, will, in all solicitations or advertisements for employees placed by or on behalf of the Local Public Agency, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Local Public Agency will incorporate the foregoing requirements of this paragraph (1) in all of its contracts for Project work, except contracts governed by paragraph (2) of this Section 107(f) and contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for Project work. *

This provision has been included in HUD contracts since 1968.

* Section 106(f) of the Neighborhood Development Program Contract is identical. Other contractual language varies slightly but includes similar requirements.



Public Law 93-502
93rd Congress, H. R. 12471
November 21, 1974

An Act

To amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the fourth sentence of section 552(a) (2) of title 5, United States Code, is amended to read as follows: "Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication."

(b) (1) Section 552(a) (3) of title 5, United States Code, is amended to read as follows:

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

(2) Section 552(a) of title 5, United States Code, is amended by redesignating paragraph (4), and all references thereto, as paragraph (5) and by inserting immediately after paragraph (3) the following new paragraph:

"(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action."

"(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown."

Public information.
Indexes, publication and distribution.

Publication in Federal Register.

Records, availability to public.

Document search and duplication fees, regulations.

88 STAT. 1561
88 STAT. 1562

Withheld agency records, court examination.

Complaints, response by defendant.

Pub. Law 93-502

- 2 -

November 21, 1974

"(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

Attorney fees and costs. "(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

CSC proceeding against officer or employee. "(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

Noncompliance, penalty. "(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member."

Administrative deadlines. "(c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

"(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

"(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

88 STAT. 1562
88 STAT. 1563 "(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request—

"(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"Unusual circumstances."

APPENDIX 4.8(a)

November 21, 1974

- 3 -

Pub. Law 93-502

"(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request."

Time extension
for agency
review.

Sec. 2. (a) Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

National defense
and foreign policy,
exemption.

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;"

(b) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

Investigatory
records for law
enforcement purposes,
exemption.

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;"

88 STAT. 1563
88 STAT. 1564

(c) Section 552(b) of title 5, United States Code, is amended by adding at the end the following: "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."

Segregable portions
of
records.

Sec. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

Reports to
Speaker of the
House and
President of
the Senate.
Contents.

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

"(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

"(2) the number of appeals made by persons under subsection (a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

Ants, p. 1562.

"(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

APPENDIX 4.8(a)

88 STAT. 1564

Pub. Law 93-502

- 4 -

November 21, 1974

"(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

"(5) a copy of every rule made by such agency regarding this section;

"(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(7) such other information as indicates efforts to administer fully this section.

Annual report. The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

Ante, p. 1561.

"Agency." " (e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Effective date.
5 USC 552
note.

SEC. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

88 STAT. 1564
88 STAT. 1565

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 20, 1974.

The House of Representatives having proceeded to reconsider the bill (H.R. 12471) entitled "An Act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

W. PAT JENNINGS

Clerk.

By W. Raymond Colley

November 21, 1974

- 5 -

Pub. Law 93-502 88 STAT. 1565

I certify that this Act originated in the House of Representatives.

W. PAT JENNINGS

Clerk.

By W. Raymond Colley

IN THE SENATE OF THE UNITED STATES.

November 21, 1974.

The Senate having proceeded to reconsider the bill (H. R. 12471) entitled "An Act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act", returned by the President of the United States with his objections to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

Attest:

FRANCIS R. VALEO

Secretary.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-876 (Comm. on Government Operations)

and No. 93-1380 (Comm. of Conference).

SENATE REPORTS: No. 93-854 accompanying S. 2543 (Comm. on the Judiciary) and No. 93-1200 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 120 (1974):

Mar. 14, considered and passed House.

May 30, considered and passed Senate, amended in lieu of S. 2543.

Oct. 1, Senate agreed to conference report.

Oct. 7, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 42:

Oct. 17, vetoed; Presidential message.

CONGRESSIONAL RECORD, Vol. 120 (1974):

Nov. 20, House overrode veto.

Nov. 21, Senate overrode veto.

rules and regulations

40 F. R. 48123

10/14/75

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY

[Docket No. R-75-194]

PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Freedom of Information Act Requests Procedure and Policy

These amendments revise Department of Housing and Urban Development regulations, Part 15 of Subtitle A of Title 24 of the Code of Federal Regulations in order to effectuate the amendments to Section 552 of Title 5, United States Code, known as the Freedom of Information Act, enacted November 21, 1974, as Public Law 93-502.

On February 19, 1975 there was published in the FEDERAL REGISTER (40 F.R. 7259-7261) an Interim Rule with amendments to Part 15 of Subtitle A of Title 24 of the Code of Federal Regulations. The Interim Rule conformed HUD regulations to the 1974 Amendments to the Freedom of Information Act, Public Law 93-502. No comments were received. The Interim Rule is being adopted with the following changes:

Section 15.14 has been revised to accomplish a reduction of the charges for the reproduction of documents which have been the subject of a Freedom of Information Act request for recovery of only the direct costs of such search and reproduction, as required by the Act.

Sections 15.42(a), 15.42(c) and 15.52 are revised to reflect that an appeal of an initial denial of a request for information will be conducted by the General Counsel, rather than by the Secretary or designee. This change will enable the Department to expedite decisions on appeals and thereby assure compliance with the twenty-day requirement of the Amended Act.

Section 15.61 changes the addressing procedure for requesting review of an initial denial of information to reflect the changed procedure for appeals, described above.

The Interim Rule amendment to Section 15.31(b), by inadvertence, omitted subpart 15.31(b)(3) relating to addresses of Area and Insuring Offices where records may be inspected and obtained. This subpart has been re-inserted.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, 24 CFR Part 15 is amended to read as follows:

Subpart A—Purpose and Policy

Sec.

- 15.1 Definitions.
- 15.2 Purpose and applicability.
- 15.3 Statement of Policy.

Subpart B—Production and Disclosure of Records

- 15.11 Publication in the FEDERAL REGISTER.
- 15.12 Materials not published in FEDERAL REGISTER.
- 15.13 Identifiable records produced upon request.
- 15.14 Schedule of fees.

Subpart C—Exemptions

- 15.21 Exemptions authorized by 5 U.S.C. 552.

Subpart D—Where Records May Be Inspected and Obtained

- 15.31 Information centers.
- 15.32 Information officers.
- 15.33 Material in Department Central Information Center.

Subpart E—Procedure for Requesting Access to Records

- 15.41 Requests for records.
- 15.42 Time limitations.

Subpart F—Disclosure of Records and Refusal To Disclose

- 15.51 Authority to release records or copies.
- 15.52 Authority to deny requests for records.

Subpart G—Administrative Review of Denials of Requests for Records

- 15.61 Administrative review.

Subpart H—Production in Response to Subpoenas or Demands of Courts or Other Authorities

- 15.71 Purpose and scope.
- 15.72 Production prohibited unless approved by the Secretary.
- 15.73 Procedure in the event of a demand for production or disclosure.
- 15.74 Procedure in the event of an adverse ruling.

AUTHORITY: The provisions of this Part 15 issued under 5 U.S.C. 552 and sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); and P.L. 93-502, 88 Stat. 1561.

Subpart A—Purpose and Policy

§ 15.1 Definitions.

As used in this Part—

(a) "Act" means section 552 of Title 5, United States Code, as amended by Public Law 90-23, 81 Stat. 54, June 5, 1967, and Public Law 93-502, 88 Stat. 1561, November 21, 1974.

(b) "Department" means the Department of Housing and Urban Development which consists of the Office of the Secretary and the several organizational units.

(c) "Secretary" means the Secretary of Housing and Urban Development.

(d) "Organizational unit" means any one of the several offices, staffs, divisions, or administrations of the Department including the Government National Mortgage Association (GNMA), the Federal Insurance Administration (FIA), the

APPENDIX L.8(b)

Office of Interstate Land Sales Registration, the Community Development Corporation, and the Federal Disaster Assistance Administration.

(e) "Person" means "person" as defined in 5 U.S.C. 551(2) to include corporations and organizations as well as individuals.

(f) "Information center" means any place, reading room, desk, or other area or facility established and maintained by the Department where the public may request and obtain information and records concerning the Department's operations and business.

§ 15.2 Purpose and applicability.

This part contains the rules and regulations of the Department implementing 5 U.S.C. 552. It informs the public about where and how the Department's records and information may be obtained from its organizational units as defined in § 15.1(d). Part 15 applies to all organizational units, except that its applicability to the Office of Interstate Land Sales Registration is subject to the provisions of § 1700.30 of this title.

§ 15.3 Statement of policy.

The Department's policy is one of full and responsible disclosure of its identifiable records and information consistent with such competing public interests concerning the national security, personal privacy, and obligations of confidentiality as are recognized by 5 U.S.C. 552.

Subpart B—Production and Disclosure of Records

§ 15.11 Publication in the Federal Register.

Subject to the exemptions in § 15.21, the Department shall separately state and currently publish in the *FEDERAL REGISTER* for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department; and

(e) Each amendment, revision, or

repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the *FEDERAL REGISTER* and not so published. For purposes of this section, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the *FEDERAL REGISTER* when incorporated by reference therein with the approval of the Director of the Office of the Federal Register, as provided in 1 CFR Part 20.

§ 15.12 Materials not published in Federal Register.

(a) Subject to the exemptions in § 15.21, the Department, in accordance with this part, shall make available for public inspection and copying:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretations which have been adopted by the Department and are not published in the *FEDERAL REGISTER*; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) To prevent a clearly unwarranted invasion of personal privacy, the Department may delete identifying details when it makes available or publishes any material. Whenever such deletions are required, the record or copy will be made available with the space formerly occupied by such identifying details left blank, and the justification for the deletion shall be explained fully in writing.

(c) The Department shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this section to be made available or published. The Department shall promptly publish quarterly and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the *FEDERAL REGISTER* that the publication would be unnecessary and impracticable, in which case the Department shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication.

§ 15.13 Records produced upon request when reasonably described.

(a) The procedures for requesting access to records are set forth in Subpart E of this part.

(b) When a request is made which reasonably describes a record of the Department which has been stored in the National Archives or other record centers

APPENDIX 4.8(b)

of the General Services Administration, such record will be requested by the Department if it otherwise would be available under this part.

(c) Every effort will be made to make a record in use by the staff of the Department available when requested, and such availability will be deferred only to the extent necessary to avoid serious interference with the business of the Department.

(d) Copies of a requested record need not be furnished if the record is published in the Federal Register or is available for purchase from the Superintendent of Documents of the Government Printing Office. Such records may, however, be examined in one of the Department's information centers.

§ 15.11 Schedule of fees.

For the services listed below performed in the location and disclosure or furnishing of copies of records under 5 U.S.C. 552, and pursuant to the policy established by Congress in 31 U.S.C. 182a, the following charges will apply:

(a) Records search:

(1) First man-hour on any single request: no fee.

(2) Each additional man-hour or fraction thereof: \$5.

(b) Copies of documents: Xerox or equivalent, page size up to 8½ inches by 14 inches, per page: \$0.10.

(c) Maximum number of copies furnished of any record: 10.

(d) Payment of fees under this section shall be made in cash, or by U.S. money order, or by certified bank check payable to the Treasurer of the United States. Postage stamps will not be accepted.

(e) Records shall be furnished without charge or at a reduced charge where the Department determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

Subpart C—Exemptions

§ 15.21 Exemptions authorized by 5 U.S.C. 552.

A requested record shall not be withheld from inspection or copying unless it both (1) comes within one of the classes of records exempted by 5 U.S.C. 552, and (2) there is need in the public interest to withhold it. In determining the scope of the classes of records described in paragraph (a) of this section, the Attorney General's Memorandum on the Public Information Act, June 1967, will be used as a guide.

(a) The classes of records authorized to be exempted from disclosure by 5 U.S.C. 552 are those which concern matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of na-

tional defense or foreign policy and are in fact, properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Department;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Department;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Department in connection with its responsibility for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

Subpart D—Where Records May Be Inspected and Obtained

§ 15.31 Information centers.

(a) The Department maintains a Central Information Center in Washington, D.C., at the following location:

Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 1202, Washington, D.C. 20410.

(b) The Department also maintains an information center—

(1) In each of its Regional Offices as follows:

Region I (Boston)—Room 606, John P. Kennedy Building, Boston, Mass. 02203.

APPENDIX 4.8(b)

Region II (New York)--20 Federal Plaza, Room 3541, New York, N.Y. 10007.
 Region III (Philadelphia)--Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19105.
 Region IV (Atlanta)--Room 211, Pershing Hotel Plaza, 1571 Peachtree Street N.E., Atlanta, Georgia 30309.
 Region V (Chicago)--200 South Wacker Drive, Chicago, Illinois 60606.
 Region VI (Dallas)--Room 1302, Earle Cabell Federal Building, U.S. Courthouse, 1100 Commerce Street, Dallas, Texas 75202.
 Region VII (St. Louis City)--Federal Office Building, Room 300, 911 Walnut Street, Kansas City, Missouri 64106.
 Region VIII (Denver)--Federal Building, 1961 Stout Street, Denver, Colorado 80202.
 Region IX (San Francisco)--450 Golden Gate Avenue, Post Office Box 3009, San Francisco, California 94102.
 Region X (Seattle)--Arcade Plaza Building, 1321 Second Avenue, Seattle, Wash. 98101.

(2) With respect to the mortgage loan activities of GNMA, in each FNMA Regional Office as follows:

5 Penn Center Plaza, Philadelphia, PA 19103.
 100 Peachtree Street, N.W., Atlanta, GA 30303.
 150 South Wacker Drive, Chicago, IL 60606.
 2201 Bryan Tower, Suite 1200, Dallas, TX 75201.
 3455 Wilshire Boulevard, Los Angeles, CA 90010.

(3) In each Area Office and each Insuring Office; for addresses see listings in local telephone directories under "United States Government".

§ 15.32 Information officers.

There shall be an information officer in each of the information centers described in § 15.31 who shall be responsible for making information and records available to the public in accordance with this part. The information officer in the Department Central Information Center shall be designated by the Director, Office of Public Affairs. The information officer in each Regional Office and field office shall be designated by the Regional Administrator or the Director of the office, as the case may be, with the concurrence of the Director, Office of Public Affairs.

§ 15.33 Material in Department Central Information Center.

(a) The Central Information Center shall contain or have ready access to the following as a minimum:

- (1) Federal Register, Code of Federal Regulations, and regulations of the Department contained therein;
- (2) Precedent final opinions and orders in the adjudication of cases;
- (3) Administrative staff manuals which affect the public;
- (4) Program manuals which affect the public and forms;
- (5) Interpretations relied upon as precedents;
- (6) A current index of the foregoing materials issued, adopted, or promulgated after July 4, 1967.

(b) The information center in each Regional Office, Area Office, and Insuring Office shall contain or shall have ready access to such of the above records as pertain to the activities of that office.

(c) Facilities shall be available to each information center for the copying of properly requested and available records.

Subpart E--Procedures for Requesting Access to Records

§ 15.41 Requests for records.

(a) Requests for copies of records may be made in person during normal business hours at information centers listed in § 15.31 or by mail addressed to such centers. Although oral requests may be honored, a requester may be asked to submit his request in writing.

(b) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. In order to enable the Department to comply with the time limitations set forth in § 15.42, the envelope containing a written request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request.

(c) The request shall be accompanied by the fee or an offer to pay the fee as determined pursuant to § 15.14. At its discretion, the Department may refuse to furnish records prior to receipt of the required fee.

(d) Copies of available records shall be made as promptly as possible. Copying service shall be limited to not more than 10 copies of any single page. Records which are published or available for sale need not be reproduced.

§ 15.42 Time limitations.

(a) Upon receipt of a request for records, the head of the appropriate organizational unit shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) whether to comply with such requests and shall immediately notify in writing the requester of such determination and the reasons therefor and the right of such person to request a review by the General Counsel of any adverse determination.

(b) When a request for records is misdirected by the requester, the Department official receiving same shall promptly refer it to the head of the appropriate organizational unit and advise the requester that time of receipt for processing purposes will be the time when it is received by the appropriate official.

(c) A determination with respect to a request for review by the General Counsel pursuant to § 15.61 shall be made within twenty days after receipt (excepting Saturdays, Sundays, and legal public holidays) and shall be immediately communicated to the person re-

APPENDIX 4.8(b)

questing review.

(d) Upon any determination to comply with a request for records, the records shall be made promptly available to the requester.

(e) In unusual circumstances as specified in this paragraph, and subject to the concurrence of the General Counsel, the time limits prescribed in either paragraph (a) or (c) may be extended by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means but only to the extent necessary to the proper processing of the particular request that there is a need:

(1) to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or of one or more organizational units of the Department having a substantial interest in the subject matter of the request.

Subpart F—Disclosure of Records and Refusal To Disclose

§ 15.51 Authority to release records or copies.

The head of each organizational unit or his designee, with respect to records pertaining to programs or activities for which he has primary responsibility, is authorized to release any Department record or copy thereof unless disclosure is clearly not appropriate under this part. Such authorized persons may release records for which another officer has primary responsibility only with the consent of the other officer or his designee.

§ 15.52 Authority to deny requests for records.

The officers and their designees described in the preceding § 15.51, may deny a request for a record. Any denial shall be made in writing, contain a simple statement of reasons for the denial, state that a review of the denial by the General Counsel may be requested, set forth the steps for obtaining that review in accordance with § 15.61, and shall be signed by the official responsible for such denial. Prior to a denial the officer or designee shall obtain the concurrence of appropriate field or headquarters counsel in the denial. Prior to concurring in a denial, field counsel shall, through appro-

priate supervisory channels, obtain the approval of the General Counsel at headquarters. Denial shall terminate the authority of the particular officer or designee to release or disclose the requested record, which thereafter may not be made available except with the express authorization of the General Counsel.

Subpart G—Administrative Review of Denial of Requests for Records

§ 15.61 Administrative review.

(a) Review shall be available only from a written denial of a request for a record issued under § 15.52, and only if a written request for review is filed within thirty days after issuance of the written denial. The filing of the request for review may be accomplished by mailing to the Assistant General Counsel for Finance and Administrative Law, Department of Housing and Urban Development, 451 7th Street, S.W., Room 1025B, Washington, D.C. 20410, a copy of the request if in writing, a copy of the written denial issued under § 15.52, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the original request for the record. In order to enable the Department to comply with the time limitations set forth in § 15.42, the envelope containing the request for review and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request for review. Review will be made promptly by the General Counsel on the basis of the written record described in this § 15.61.

(b) When a request for review is misdirected by the requester, the departmental official receiving same shall promptly refer it to the Assistant General Counsel for Finance and Administrative Law and advise the requester that the time of receipt for processing purposes will be the time when it is received by the Assistant General Counsel for Finance and Administrative Law.

(c) The decision after review will be in writing, will constitute final action of the Department on a request, and, if the denial of the request for records is in full or part upheld, the Department shall notify the person making the request of his right to seek judicial review under 5 U.S.C. 552(a)(4).

Subpart H—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 15.71 Purpose and scope.

This subpart contains the regulations of the Department concerning procedures to be followed when a subpoena, order, or other demand (hereinafter referred to in this subpart as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the

APPENDIX 4.8(b)

Department, (b) any information relating to material contained in the files of the Department, or (c) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status. For the purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision of, the Secretary.

§ 15.72 Production prohibited unless approved by the Secretary.

No employee or former employee of the Department shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department, or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as a part of the performance of his official duties or because of his official status, without the prior approval of the Secretary.

§ 15.73 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department for the production of material or the disclosure of information described in § 15.71, he shall immediately notify the Secretary and either the General Counsel or the appropriate Regional Counsel. The "appropriate Regional Counsel" shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. If possible, the Secretary shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Secretary are received, the U.S. Attorney or such other attorney as may be designated for the purpose, will appear with the employee or former employee of the Department upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the Secretary. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Secretary.

§ 15.74 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 15.73(b) pending receipt of in-

structions from the Secretary, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Secretary not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel. Toney v. Hagen, 340 U.S. 462).

(b U.S.C. 852 and sec. 7(d), 70 Stat. 670; 42 U.S.C. 3535(d); and Public Law 93-502, 88 Stat. 1861)

Effective date. These amendments shall be effective October 3, 1975.

CARLA A. HILLS,
Secretary.

Housing and Urban Development.

[FR Doc.75-27448 Filed 10-10-75; 8:45 am]

GLOSSARY OF TERMS

The words, terms, or expressions used in the administration of Title VI of the Civil Rights Act of 1964 by the Department of Housing and Urban Development are set out and defined herein.

Terms/ExpressionsHandbook Reference
Section (paragraph)Affirmative Action Plan (AAP)

31 (b)

A written document which sets forth methods, procedures, or actions of a nature which, when implemented, will correct and improve the conditions found by the Department to have limited participation by persons of a particular race, color, or national origin.

Allegation

14(b)

Charge made by a complainant.

25(h)

Apparent Noncompliance

Throughout

The existence of evidence which gives the conclusive appearance that a recipient of federal financial assistance has not complied with Title VI of the Civil Rights Act of 1964.

Assurance of Compliance

42

A positive declaration by an applicant or recipient of HUD financial assistance intended to give the Department full confidence that the applicant/recipient does not, and will not, on the basis of race, color, or national origin exclude from participation in, deny the benefits of, or subject any person to discrimination under any program or activity financed in whole or in part with funds from this Department.

Case Summary

39(b)

A one (1) page narrative immediately following the cover page of a Final Investigation Report which succinctly summarizes the case.

APPENDIX 4.9

Terms/Expressions	Handbook Reference Section (paragraph)
<u>Certification</u>	42 a (2)
Attestation by an applicant or recipient of Community Development Block Grant funds that it will comply with: Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Section 109 of the Housing and Community Development Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Executive Order 11246; Executive Order 11063, and any HUD regulation issued to implement those authorities.	
<u>Community-Wide Compliance Review</u>	5(b)
An in-depth examination of all agencies in a clearly defined area or locality which receives HUD financial assistance, to determine whether their HUD-assisted programs or activities are administered and operated in compliance with Title VI.	
<u>Comprehensive Complaint</u>	12(b)
A complaint of discrimination in a number of program areas which does not identify a particular program, project, activity, complainant, or basis. Comprehensive complaints do not contain enough information to indicate a possible failure to comply with Title VI.	
<u>Conciliation/Mediation</u>	28 c(2), d(1)
An attempt to settle disputes with the help of an outsider who assists the disputants in their negotiations with the sole objective being to bring the parties to voluntary agreements.	
<u>Consequential Deferral</u>	33 e(2)
Deferral imposed at the request of the AS/FH&EO as a result of the failure of a HUD recipient to voluntarily comply with Title VI.	

Terms/ExpressionsHandbook Reference
Section (paragraph)Cosmic Complaint

12(b)

A broad-based complaint which does not focus on a particular program, project, activity, complainant, or basis, does not contain enough information to indicate possible noncompliance with Title VI, and should not be investigated.

Deferral

33(c)

The act of postponing staff processing of an application for HUD financial assistance pending initiation and completion of procedures required by Section 602 of Title VI of the Civil Rights Act of 1964.

Documentation

25(h)

Information and/or data which substantiates or supports a specific allegation, opinion, speculation, or issue of noncompliance.

Employment Discrimination

11

Any action which denies a person the opportunity to be employed, paid, transferred, promoted, re-assigned, etc. on the basis of race, color, national origin, sex, or religion.

Equal Employment Opportunity Contract Clause

11(d), Appendix

Language contained in contracts for the HUD financial assistance which requires nondiscrimination in the staff nonconstruction employment of the recipient based on race, color, national origin, sex, or religion as a condition of the contract.

4.1

Failure to Reach Voluntary Compliance

32

The expiration of the prescribed period for negotiation for voluntary compliance without the submission of a plan which when implemented would bring a recipient into conformance with the requirements of Title VI of the Civil Rights Act of 1964.

APPENDIX 4.9

Terms/Expressions	Handbook Reference Section (paragraph)
The requirements imposed by or pursuant to that section, and when the areas of apparent noncompliance cannot be corrected by informal means.	
<u>FH&EO Regional Unit Head</u>	45(b)
The ARA/FH&EO. For purposes of honoring requests for Title VI related reports and material under the Freedom of Information Act the ARA/FH&EO is the designated FH&EO Regional Unit Head.	
<u>Final Investigation Report (FIR)</u>	34
A written report setting forth information requisite to making a determination regarding an applicant or recipient's compliance or non-compliance with Title VI and implementing regulation.	
<u>Freedom of Information Act (FOIA)</u>	43
Legislation designed to make most information maintained by the Executive Branch of the Federal Government available to the public.	
<u>Funded Agency</u>	11(d)
Agency funded in whole in part with HUD financial assistance.	
<u>Initiation of the Administrative Process</u>	29 d(2)
The forwarding by the ARA/FH&EO of a report of a compliance review or complaint investigation to the AS/FH&EO with a recommendation for formal enforcement.	
<u>Insufficient Evidence (of Compliance/Noncompliance)</u>	26 b (3)
Data which is not conclusive of the compliance status of a recipient.	

Terms/ExpressionsHandbook Reference
Section (paragraph)Interim Deferral

33 e(1)

Deferral imposed at the recommendation of the ARA/FH&EO when a Title VI respondent fails or refuses to inform the Regional Office, within 30 days from the receipt of the notice of apparent noncompliance, of its intention to comply or submit a voluntary compliance plan within 60 days of receipt of the aforementioned notice.

Issue

A specific question raised by the Department in an effort to ascertain whether a recipient has complied with civil rights or other authorities administered by the Office of FH&EO.

14(b)
25(h)
26 c(1)Lead Person

24(d)

The person charged with the responsibility to carry out a particular activity.

Lifting a Deferral

33(f)

Removing administrative restrictions imposed as a result of Title VI violations on the processing of applications from HUD respondents/applicants.

Negotiation

28 c(1), d

A discussion mutually initiated by disputants without outside participation for the purpose of setting terms or clearing obstacles to an agreement which will secure the compliance of one of the respondents/disputants.

Noncompliance

26 b(2)

Failure to comply with Title VI and its implementing regulation.

Terms/Expressions	Handbook Reference Section (paragraph)
<u>Organizational Unit Head</u>	45(b)
In connection with Title VI matters subject to release under the Freedom of Information Act, the Assistant Secretary for Fair Housing and Equal Opportunity.	
<u>Policy</u>	25 h(3)
An official written statement of standards and procedures.	
<u>Practice</u>	
Procedures or ad hoc standards exercised or applied repeatedly .	
<u>Post-audit Review</u>	5(c)
An examination of specific aspects of the administration and operation of a HUD financially assisted agency to determine whether said agency is complying with special compliance requirements.	
<u>Racial Disparity</u>	25(e)
Disproportionate numbers or percentages of eligible persons of a particular race, color, or national origin, compared with the number or percentages of eligible persons of another race, color, or national origin, when both are represented in a particular situation.	
<u>Respondent, Respondent/Recipient, Respondent/Applicant</u>	27(b)
A HUD applicant/recipient who receives a notice of apparent noncompliance with Title VI.	
<u>Single Agency Compliance Review</u>	5(a)
An in-depth examination of an agency which receives HUD financial assistance in a clearly defined area or locality to determine whether its HUD-assisted programs or activities are	

Terms/Expressions	Handbook Reference Section (paragraph)
are administered and operated in compliance with Title VI.	
<u>Substantial Compliance Conformity</u>	25 b(2)
Conformity to a material degree with Title VI and its implementing regulations.	
<u>Team Leader</u>	24(a)
The person assigned to coordinate a group of investigators and every aspect of a Title VI compliance review or complaint investigation.	
<u>Title VI Compliance Data</u>	25(c)
Any substantiated information which demonstrates the extent to which HUD recipients and/or applicants afford all minorities the same opportunity as nonminority persons to benefit from and/or participate in HUD financially assisted programs or activities.	
<u>Working Papers</u>	35(a)
All notes or papers developed in preparation for the field visit and those acquired during the course of the field visit.	